

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-TP-092
)	
Alexandre Pierre Abelard)	NAL/Acct. No.200332700025
AKA Abelard Pierre)	
7961 Gladiolus Dr., Apt. 304)	FRN 0008948150
Fort Myers, Florida 33908)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 20, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Alexandre Pierre Abelard, aka Abelard Pierre, apparently liable for forfeiture in the amount of seventeen thousand dollars (\$17,000) for willful violation of Sections 301 and 303(n) of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Alexandre Pierre Abelard, aka Abelard Pierre apparently liable for the operation of an FM broadcast station on the frequency 103.3 MHz without Commission authorization and for failure to allow inspection of the radio installation located on Abelard’s premises.

II. BACKGROUND

2. On March 3, 2003, the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) received a complaint from the Federal Aviation Administration (“FAA”) alleging that an unlicensed radio station operating on 103.3 MHz in Fort Myers, Florida was causing interference to aircraft communications in that area on the frequency 119.00 MHz.

3. On March 4, 2003, agents from the Tampa Office investigated the FAA’s complaint and, using direction-finding techniques, determined that a radio broadcast station on frequency 103.3 MHz was transmitting from a one-story strip business building located at 2217 Fowler Street, Fort Myers, Florida. An FM broadcast-type antenna was mounted on a metal pipe attached to the side of the building. The coaxial cable from the antenna entered suite number 2217 of the building. Based on field strength measurements taken by the agents of the station’s signal, a Commission authorization was required to operate the station.² Additionally, the agents observed a spurious radio emission on the aviation

¹ 47 U.S.C. §§ 301 and 303(n).

² Section 15.239(b) of the Commission’s Rules, 47 C.F.R. § 15.239(b), provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 2,367 times.

frequency 119.00 MHz emanating from the same location. This spurious emission was at the same signal strength level as the main emission on 103.3 MHz. Immediately thereafter, the agents approached the building and knocked on the door of Suite 2217. No one responded to the door and no lights were on inside the suite. Several minutes later, an adult male drove up and parked directly in front of Suite 2217. The agents approached this man and identified themselves as Commission representatives by showing the man their official credentials. The agents interviewed this man, identified by his driver's license as Alexandre Pierre Abelard of 7961 Gladiolus Dr., Apt. 304 (Lakes Park Apartments), Fort Myers, FL 33908. Mr. Abelard rents an apartment at that location under the name of Abelard Pierre. Mr. Abelard stated that he was the lessee of Suite 2217. The agents told Mr. Abelard about the interference problem and station license requirement. The agents requested of Mr. Abelard to inspect the radio station inside the suite. Mr. Abelard stated that he was not the operator of the station, that he was sub-leasing a back room of the suite to another individual and did not have the key for the back room, but that he would turn the power off to the back area from his front office. The agents explained the Commission's legal authority to inspect radio installations and explained the need to inspect the station inside Mr. Abelard's suite because the station operated illegally and was causing harmful interference to aviation communications. The agents again requested to see the room containing the transmitter. Mr. Abelard again declined the agents' request. Mr. Abelard then entered the suite and, shortly thereafter, the radio station ceased to transmit.

4. On March 5, 2003, the agents returned to 2217 Fowler Street, Ft. Myers, Florida, and again interviewed Mr. Abelard. Mr. Abelard stated that the transmitter had been picked up by its purported owner earlier that day. The station's antenna was lying on the ground on the side of the building. Mr. Abelard showed the agents into the back of the office where the transmitter purportedly used to be. The agents found that this back room had no lock, required no key to enter, and was freely accessible from Mr. Abelard's suite, in contradiction to Mr. Abelard's statements the previous day. Mr. Abelard stated that he was the original owner of the transmitter but that he had sold it to, and received partial payment from, an individual he knew only as "Jean Louis." When requested by the agents, Mr. Abelard could not show evidence of the transaction or any evidence that "Jean Louis" actually existed.

III. DISCUSSION

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On March 4, 2003, Alexandre Pierre Abelard aka Abelard Pierre operated radio transmitting equipment on the frequency 103.3 MHz without the required Commission authorization. Section 303(n) of the Act sets forth that the Commission has the authority to inspect all radio installations associated with stations required to be licensed. On March 4, 2003, Alexandre Pierre Abelard aka Abelard Pierre failed to allow agents of the Commission to inspect the radio station located on his premises after repeated requests to do so.

6. Based on the evidence before us, we find that on March 4, 2003, Alexandre Pierre Abelard aka Abelard Pierre willfully³ violated Sections 301 and 303(n) of the Act by operating radio transmission

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that

apparatus without a license and by failing to allow an inspection of his radio installation upon request by authorized Commission representatives.

7. Pursuant to Section 1.80(b) (4) of the Rules,⁴ the base forfeiture amount for operating a radio station without a Commission authorization is \$10,000, and for failure to permit inspection is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$17,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Alexandre Pierre Abelard aka Abelard Pierre is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for willful violation of Sections 301 and 303(n) of the Act by operating a radio station without Commission authorization and for failing to allow an inspection of his radio installation by authorized Commission representatives.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Alexandre Pierre Abelard aka Abelard Pierre SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety

“[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Alexandre Pierre Abelard aka Abelard Pierre, 7961 Gladiolus Dr., Apt. 304, Fort Myers, FL 33908.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Field Office, Enforcement Bureau

Attachment